



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,194	10/28/2003	Denis Francois Hochstrasser	108140.00030	4418
38485	7590	05/13/2008	EXAMINER	
ARENT FOX LLP 1675 BROADWAY NEW YORK, NY 10019			SWARTZ, RODNEY P	
			ART UNIT	PAPER NUMBER
			1645	
			NOTIFICATION DATE	DELIVERY MODE
			05/13/2008	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

NYIPDocket@arentfox.com  
Patent\_Mail@arentfox.com



### **DETAILED ACTION**

1. This Office Action has been generated to correct an error on the form PTO-326 on which both the Final and NonFinal boxes were checked. The correct indication is "NonFinal" as shown on the new PTO-326 form accompanying this Office Action. Time for reply has been reset to 3 months from the mailing date of this Office Action.

2. Applicants' Response to Office Action, 11 January 2007, is acknowledged. Claims 1, 2, 3, 21, 29, 32, 33, 35, 36, 37, 49, 41, and 43 have been amended.

Claims 1-6, 8-38, and 40-47 are pending. Claims 20, 23-28, and 47 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention.

3. Claims 1-6, 8-19, 21, 22, 29-38, and 40-46 solely drawn to a method and kit for diagnosis of TSE using polypeptide are under consideration.

### **Rejection Maintained**

4. The rejection of claims 29-31 under 35 U.S.C. 112, second paragraph, as being indefinite for identity of "probe", is maintained.

Applicants argue that the amendment of the claims provides more definition to the probe.

The examiner has considered applicants' argument, but does not find it persuasive. As newly amended, claim 29 now recites two components, i.e., "a kit comprising a probe or protein chip array". The description of structural characteristics appears to be only of the protein chip array. Thus, the identity of the probe remains unclear.

5. The rejection of claims 1-6, 8-19, 21, 22, 29-38, and 40-46 under 35 U.S.C. 112, first paragraph, scope of enablement for differentiation of any/all forms of TSE by mere alteration of level of nonspecified proteins, is maintained.

Art Unit: 1645

Applicants argue that the amendments of the claims to limit the claims to detection/diagnosis prognosis of BSE or CJD obviates the enablement rejection.

The examiner has considered applicants' argument and claim amendments, but does not find it persuasive. While the amendment does restrict the TSE to BSE or CJD, the claims retain the recitation: "comparing the test amount of the polypeptide in the sample to **a** reference amount of the polypeptide". This requirement is not linked to any specific amount, i.e., normal or abnormal. Thus, the claims remain not enabled due to this aspect of the comparison, i.e., **a** reference amount, versus the amount found in the normal samples.

### **Conclusion**

6. No claims are allowed.

7. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Rodney P. Swartz, Ph.D., Art Unit 1645, whose telephone number is (571) 272-0865. The examiner can normally be reached on Monday through Wednesday from 9:00 AM to 7:30 PM EST. Thursday is the examiner's work at home day.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Shannon Foley, can be reached on (571)272-0898.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

Art Unit: 1645

system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Rodney P. Swartz, Ph.D./

Primary Examiner, Art Unit 1645

April 29, 2008